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**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

NAVAJO NATION HUMAN RIGHTS
COMMISSION; PEGGY PHILLIPS; MARK
MARYBOY; WILFRED JONES; TERRY
WHITEHAT; BETTY BILLIE FARLEY;
WILLIE SKOW; and MABEL SKOW,

Plaintiffs,

v.

SAN JUAN COUNTY; JOHN DAVID
NIELSON, in his official capacity as San Juan
County Clerk; and PHIL LYMAN, BRUCE
ADAMS, and REBECCA BENALLY, in their
official capacities as San Juan County
Commissioners,

Defendants.

**MOTION TO DISMISS CLAIMS OF
PLAINTIFF NAVAJO HUMAN
RIGHTS COMMISSION**

Case No. 2:16-cv-00154 JNP

Judge Jill N. Parrish

Magistrate Judge Brooke C. Wells

Oral Argument Not Requested

SAN JUAN COUNTY; JOHN DAVID
NIELSON; PHIL LYMAN, BRUCE
ADAMS; and REBECCA BENALLY

Counterclaim Plaintiffs,

v.

NAVAJO NATION HUMAN RIGHTS
COMMISSION; PEGGY PHILLIPS; MARK
MARYBOY; WILFRED JONES; TERRY
WHITEHAT; BETTY BILLIE FARLEY;
WILLIE SKOW; and MABEL SKOW,

Counterclaim Defendants.

Plaintiff Navajo Human Rights Commission (the “Commission”) has commenced this action under the *Voting Rights Act*,¹ and the *Fourteenth Amendment* to the United States *Constitution* challenging San Juan County, Utah’s conduct of elections by mail-in-ballots. The Commission acknowledges in its *Complaint* that it is “an office within the legislative branch of the Navajo Nation and operates as a clearinghouse to **administratively address** discriminatory actions against citizens of the Navajo Nation.”² However, the Commission is not

¹ 52 U.S.C. §§ 10301 and 10503.

² *Complaint*, Dkt. 2, ¶ 13(emphasis added). *See also*, 2 N.N.C. §920, Exhibit 1 hereto.

vested with the power to sue on behalf of either the Navajo Nation or its members.³ The Commission is, in other words, a non-jural entity lacking the requisite standing and/or authority to maintain this action.

Wherefore, pursuant to *Federal Rules of Civil Procedure* 12(b)(6) and 12(c), Defendants hereby move to dismiss the Commissions' claims with prejudice. **Oral argument is not requested.**

ARGUMENT

Federal courts only have jurisdiction over a dispute if it involves a “case” or “controversy.”⁴ One element of the case-or-controversy requirement is that the plaintiff must allege his or her standing to sue.⁵ In order to meet the standing requirement of Article III, the plaintiff must allege a personal injury that is fairly traceable to the defendant's allegedly unlawful conduct.⁶ Put otherwise, the plaintiff must have suffered a “particularized” injury, which means that “the injury

³ See 2 N.N.C. §921, Exhibit 2 hereto.

⁴ *Raines v. Byrd*, 521 U.S. 811, 818 (1997).

⁵ *Id.*

⁶ *Id.*

must affect the plaintiff in a personal and individual way.”⁷ Standing also requires an injury in fact, not some imaginary injury.⁸ In the instant case, however, the Commission lacks both standing and the authority to maintain this action.

To begin with, the Commission does not vote, which means that it has no injury much less a personal injury. Moreover, the Commission cannot sue to enforce the rights of others.⁹ As noted above, in order to maintain this action the Commission must allege a personal and particularized injury, and it has not done so. Furthermore, as a non-jural entity, the Commission lacks both the capacity and authority to sue.

The Commission is a non-jural entity because it is not a separate legal entity. Instead, it is a subdivision of the Navajo Nation under the direction and control of the Navajo Nation. Furthermore, the Commissions’ statutory powers and duties do not include the power to sue on behalf of the Navajo Nation and/or its members.¹⁰ Thus, the Commission is not a separate legal entity from the

⁷ *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

⁸ *United States v. S.C.R.A.P.*, 412 U.S. 669, 689-90(1973).

⁹ *See Archuleta v. McShan*, 897 F.2d 495, 497 (10th Cir. 1990).

¹⁰ See 2 N.N.C. §922, Exhibit 3 hereto

Navajo Nation so as to have either the standing or authority to maintain this action.¹¹

CONCLUSION

The Commission's claims against Defendants should be dismissed in their entirety and with prejudice.

DATED this 7th day of April, 2016.

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¹¹ Cf. *Braillard v. Maricopa County*, 232 P.3d 1263, 1269 (Ariz. App. 2010) (determining that Sheriff's Office was a non-jural entity that lacked capacity to be sued); *Vine v. County of Ingham*, 884 F. Supp. 1153, 1158 (W. D. Mich. 1995) (determining that Sheriff's Office is not a legal entity that can be sued); *United States v. Maricopa County*, 915 F. Supp. 2d 1073, 1077(D. Ariz. 2012) (same).

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of April, 2016, I electronically filed the foregoing document with the U.S. District Court for the District of Utah. Notice will automatically be electronically mailed to the following individual(s) who are registered with the U.S. District Court CM/ECF System:

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